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March 4, 2016

By ECF and by Email

The Honorable Richard J. Sullivan  
United States District Court Judge  
United States District Court for the  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>3/7/16</u>

Re: Vincent Bertolino v. City of New York, et al.; 15 Civ. 7327 (RJS)

Dear Judge Sullivan:

I am counsel for Plaintiff in the above-captioned action, and write to respectfully request that Your Honor instruct the case openings clerk to accept what will be a second re-filing of the Second Amended Complaint. Mindy in the clerk's office has informed me that although both the original attempt to file this document on Wednesday, March 2<sup>nd</sup> [docket entry # 22], and the second attempt to file the document (at the clerk's direction, to correct an error in choosing the parties against whom it was filed on the ECF system) yesterday [docket entry # 25] were timely under Section 6 of Local Civil Rule 83.10 (formerly known as the SDNY "Plan" for certain cases against members of the NYPD and the City of NY), I now need the Court's instruction to the clerk to permit the document be re-filed yet again since I made another error in filing on ECF yesterday in selecting the parties<sup>1</sup>, and the 6 weeks to file the document as of right expired yesterday. The clerk apparently will not consider an Amended Complaint to be timely filed if the document was filed with technical errors on the ECF system, and that technical error is corrected after the period for timely filing as of right has passed.

A separate issue (which is actually a non-issue) is that opposing counsel takes the position (which Mindy in the Clerk's office has confirmed for me is incorrect) that I needed her consent to file the Second Amended Complaint. This is simply incorrect under Section 6 of Local Civil Rule

<sup>1</sup> The Clerk has recently switched from having Amended Complaints be filed by hand at the Clerk's office, to having this be done via ECF, with the addition of new parties and the replacement of John Doe parties being done by the counsel for the Plaintiff. I have been generally successful at doing this in other cases without screwing it up, but this time I have apparently screwed it up twice since I was both adding new parties and also dealing with selecting a party who had previously been a "FNU" [First Name Unknown], but who was later replaced by the same party with a full, proper name. I apologize for any inconvenience, to either the Court or the clerk. I'm getting there with becoming adept with use of the new electronic Amended Complaint filing system, albeit with a few technical stumbles.

MEMO ENDORSED

83.10, which states that “[t]he complaint may be amended to name additional defendants without leave of the presiding judge within six weeks after the first defendant files its answer.” The reason for the Second Amended Complaint’s filing (and the addition of three new defendants therein) is that I received Defendants’ Initial Disclosures and documents produced therewith on February 17, 2016, which informed me of the identity of these individuals for the first time. These defendants thus could not have been added when I filed the Amended Complaint on January 5, 2016 (which amendment simply provided the full and proper name of one of the Officers - Jorge Roca - whose first name and shield number had at that time been provided by opposing counsel, so that a summons could be issued with regard to him and so he could be served).

I thank the Court for its consideration in this matter.

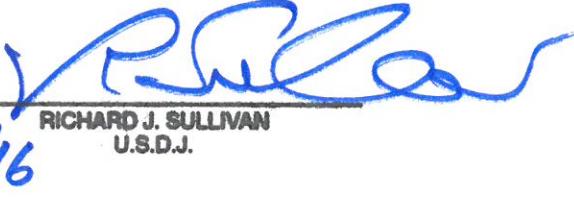
Respectfully submitted,

/S/

Jeffrey A. Rothman

cc: Elissa Jacobs, Esq. (by ECF and email)

Plaintiff is correct that he is permitted to file an amended complaint within six weeks of service of the answer under Local Civil Rule 83.10 without leave of the Court. IT IS HEREBY ORDERED that the Clerk of the Court shall permit Plaintiff to file a Second Amended Complaint.

SO ORDERED \_\_\_\_\_  
Dated: 3/4/16   
RICHARD J. SULLIVAN  
U.S.D.J.